IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 12TH JANUARY 2007 / 22ND PAUSHA 1928

Crl.Rev.Pet.No. 167 of 2007()

CRA.15/2004 of ADDL.SESSIONS COURT (SPL.CAURT), KOTTAYAM
CC.1814/1998 of JUDL. MAGISTRATE OF FIRST CLASS, CHENGANACHERRY

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REVN. PETITIONER: APPELLANT/ACCUSED

V.I.THOMAS, S/O.ITTY,
VADAKKEKARA HOUSE, PULICKAL KAVALA P.O.,
14TH MILE, K.K.ROAD JUNCTION, VAZHOOR,
KOTTAYAM DISTRICT.

BY ADV. SRI.JAIJI ITTEN
SRI.PRAMOD JAIJI

RESPONDENTS: COMPLAINANT AND STATE

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1. P.C.THOMAS, BEDHANYA HOUSE,
HOUSE NO.32/2016, RESERVE BANK COLONY,
NETHAJI ROAD, EDAPALLY P.O., KOCHI-24,
ERNAKULAM DISTRICT.

2. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.C.K.SURESH

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 12/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.R.P.No.167 of 2007

Dated this the 12th day of January 2007

O R D E R

This revision petition is directed against a concurrent verdict of guilty, conviction and sentence in a prosecution under Section 138 of the Negotiable Instruments Act.

2. The cheque is for an amount of Rs.2,31,500/-. The signature in the cheque is admitted. Notice of demand though duly received and acknowledged did not evoke any response. The complainant examined himself as PW1 and proved Exts.P1 to P8. It would appear that the crux of the contention raised by the accused is that there has been discharge of an amount of Rs.1,90,000/- after receipt of the notice. The complainant admitted partial discharge but contended that only an amount of Rs.1,40,000/- has been paid. But the crux of the issue before the court below was whether an amount of Rs.41,500/-, as contended by the petitioner or an amount of Rs.91,500/- as contended by the complainant was actually due. The courts below considered the materials available on record and chose to accept and act upon the oral evidence of PW1. They did not choose to rely on

the oral evidence of DW1 about the discharge without voucher of the amount of Rs.1,90,000/-. The plea that there was discharge of an amount of Rs.1,40,000/- only was accepted and the court directed payment of the balance amount of Rs.91,500/-. The petitioner claims to be aggrieved by the impugned concurrent judgments. The appellate court had indulgently modified the sentence into one of imprisonment till rising of court and to pay an amount of Rs.91,500/- and in default to undergo S.I for a period of one month.

4. Called upon to explain the nature of the challenge which the petitioner wants to mount against the impugned concurrent judgments, the learned counsel for the petitioner first of all contends that the courts below have erred perversely in coming to a conclusion that only an amount of Rs.1,40,000/- has been paid. In fact, an amount of Rs.1,90,000/- was paid. In the nature of the evidence that is available, I find absolutely nothing to interfere with the concurrent findings recorded by the courts below that only an amount of Rs.1,40,000/- has been paid. The oral evidence of DW1 unsupported by any voucher for such alleged discharge was, according to me, rightly not accepted by

the courts below. At any rate, sitting as the third court - of revision exercising supervisory and correctional jurisdiction, I find no reason to interfere with the concurrent conclusion that the evidence of PW1 has to be preferred to that of DW1 on the question of the quantum of discharge.

5. No other serious contentions appear to have raised before the courts below, going by the impugned judgments. The learned counsel for the petitioner points out that statutory timetable has not been followed. He further contends that there is inaccuracy in the description of the cheque in the body of the complaint and the appendix to the complaint.

6. What is there to show that the statutory timetable has not been followed? Why was that contention not raised before the court below? The learned counsel for the petitioner submits that this is a question of law and therefore even if it is not raised before the courts below, it can be urged before the court of revision. The learned counsel was requested to substantiate the said contention. The only submission made at the Bar and in the memorandum of revision is that the copy of the complaint furnished to the accused does not show the date of

the complaint. This is too inadequate a circumstance to accept the contention of the learned counsel for the petitioner that the statutory timetable has not been followed.

7. Similarly, the alleged incongruity (I say alleged because even the copy of the complaint has not been produced) in the number and date of the cheque in the body of the complaint and the appendix to the complaint, cannot, deliver any advantage to the petitioner at this belated hour when the contention that the complaint is belated is not seen specifically raised before the court below and no attempt is made before this court to substantiate that contention not raised before the courts below. No dispute about the identity of the cheque was raised before the courts below admittedly.

8. In these circumstances, I find absolutely no merit in the challenge raised against the impugned verdict of guilty and conviction. The learned Additional Sessions Judge has shown maximum leniency possible and permissible. In the given circumstances, I do not find any space for further indulgence or leniency.

9. Finally, the learned counsel for the petitioner prays

that a reasonable time may be granted to the petitioner to pay the amount and avoid the default sentence. I am satisfied that a reasonable further time can be granted to the petitioner and this request can be accepted. In the nature of the relief which I propose to grant, it is not necessary to wait for issue and return of notice to the respondent.

10. In the result, this revision petition is dismissed but with the observation that the sentence shall not be executed against the petitioner till 15/03/2007. The petitioner shall appear before the learned Magistrate on that date to serve the modified sentence hereby imposed. If the petitioner does not so appear before the learned Magistrate, the learned Magistrate shall thereafter proceed to execute the modified sentence hereby imposed.

Hand over copy of this order to the learned counsel for the petitioner.

(R.BASANT, JUDGE)

jsr

R.BASANT, J

C.R.R.P.No.

ORDER

21ST DAY OF JULY 2006